

Chapter Contents

Chapter Eleven—Emergency and Critical Need Procurement Procedures

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Chapter Eleven

Emergency and Critical Need Procurement Procedures

11.1 DEFINITION AND PURPOSE

Chapter 29, Title 69, Section 6907(b), of the Delaware Code provides for obtaining professional services *'to meet the critical needs of the Agency as required by emergencies or other conditions where it is determined to be in the best interest of the Agency.'* If, in the opinion of the Secretary, an unusual emergency or critical need condition exists because of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against that requires immediate action, a waiver of the procurement procedures may be issued by the Secretary.

The appropriate Director provides the necessary support data and request letter for signature by the Secretary. See Figure 11-1.

The Code also provides that *'Any procurement pursuant to this Subsection shall be limited to those professional services necessary to satisfy the critical need.'*

11.2 PROCEDURAL EXEMPTIONS

The Code allows for the waiver of the requirements to publicly advertise, evaluate and select a firm from those responding for professional services under a declared emergency or critical need condition.

This waiver allows the Department to immediately contact a firm(s) that is considered to be qualified and available to perform the work. Depending upon the nature of the emergency or critical need, it may be only practical and in the State's best interest to contact a single firm. As an example, if

there was a serious problem with a major structure, the most prudent action may be to contact the original design firm.

In other situations, it may be better to contact several firms. This decision lies with the responsible Director.

11.3 PROCUREMENT AND ADMINISTRATIVE PROCEDURES

A procedural waiver received under this provision does not relieve an Office from other contracting and administrative requirements of the Department's procurement process.

Because of the emergency or critical need nature of the work, the Project Manager should use the most expeditious means to obtain approvals and issue the Notice to Proceed. This may involve hand-carrying and waiting for approvals, oral contacts followed by written verification, and processing items concurrently wherever possible. It is essential that the Project Manager know what each requirement entails.

The Project Manager must ensure that each element is completed as quickly as possible.

The following elements outline the process:

- Assign a Project Manager. The Project Manager's authority to expedite the process should be clearly defined and well publicized.
- Justify and prepare the waiver request.
- Prepare a brief project description and scope of work.

- Prepare a brief description of the procedure to be followed in procuring the services and administering the contract.
- Obtain the Director's and Secretary's approvals.
- Obtain an approved Project Initiation and funding approval.
- Request an agreement number.
- Hold a pre-proposal meeting, if necessary. (This meeting will probably take place even before the waiver is requested and may be by telephone or FAX. This is the shortlist and selection process.)
- Request and review the fee proposal.
- Negotiate a reasonable method of payment and fee.
- Obtain sponsoring agency approval, if applicable.
- Verify funding availability.
- Prepare a final draft agreement.
- Obtain Approval As-To-Form.
- Obtain Approval As-To-Process.
- Execute the final agreement.
- Give the Notice to Proceed.
- Confirm the funding availability based on the final agreement, if significantly different.
- Distribute the final executed agreements.
- Monitor the work in progress.
- Prepare performance evaluations.
- Notify the Office of Financial Management and Budget when the work is completed.
- Request a final audit.

- Contract closeout.

None of these elements will be completed automatically because a project has been declared an emergency or a critical need. Approvals must still be obtained from a Director and the Secretary, a waiver approved, the process to procure the services approved, a project initiation form approved, funding in-place, an agreement number assigned, an agreed-to fee and method of payment determined, an agreement executed and a notice to proceed issued. Depending upon the nature of the emergency or critical need, the Notice to Proceed may have to be issued earlier than shown in the process outline.

Although in the face of an impending emergency or critical need situation these items appear to be bureaucratic, the reality is that these requirements exist and it is the Project Manager's responsibility to know what is necessary and take care of it. One section's emergency or critical need does not necessarily trigger immediate action on the part of supporting sections.

Emergency and Critical Need contracts should also be tracked, quality of work monitored and a firm's performance evaluated.

Refer to other Chapters in the Manual for more detail on each of the procedural elements.

Figure 11-1
Emergency and/or Critical Need Request Form

EMERGENCY AND/OR CRITICAL NEED REQUEST FORM

(DATE)

TO:

Secretary of Transportation

FROM:

Director of

RE:

PART ONE: EXPLAIN THE PROBLEM AND POTENTIAL CONSEQUENCES TO THE PUBLIC

PART TWO: THE REQUEST

Pursuant to Section 6907(b), Title 29, Delaware Code, I respectfully request that you declare as unusual emergency (critical need) exists and ~~—(describe action to be taken)—~~ such as "to restore ~~(site)~~ to an adequate level of service to protect the public safety and economic stability of the State and the Delmarva Peninsula."

PART THREE: BRIEFLY OUTLINE THE WORK TO BE UNDERTAKEN, PROCUREMENT PROCESS, AND IMPORTANT SCHEDULING DATES.

PART FOUR: GIVE A PRELIMINARY ROUGH COST ESTIMATE, SUMMARIZE WHAT THE EMERGENCY WORK OR CRITICAL NEED SERVICES WILL ACCOMPLISH IN THE SHORT RUN AND WHAT PERMANENT CORRECTIONS MAY HAVE TO BE DONE, IF ANY, IN THE FUTURE.

I respectfully request a waiver of the requirement to publicly advertise and the evaluation and selection provisions for professional services as per Chapter 69, Title 29, Section 6907(b) of the Delaware Code to permit emergency procurement measures to be implemented.

For critical need services the initiating Director should state "A critical need creates a need for professional services that cannot be met through normal procurement methods."

Approved:

Secretary